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09/395,455	09/14/1999	ANDREW SARKISIAN	199-1135	6058
28549	7590	08/23/2004	EXAMINER	
KEVIN G. MIERZWA ARTZ & ARTZ, P.C. 28333 TELEGRAPH ROAD, SUITE 250 SOUTHFIELD, MI 48034			COLON, CATHERINE M	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/395,455

Applicant(s)

SARKISIAN ET AL.

Examiner

C. Michelle Colon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-8,10,13-15,17-21,23,26-31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-8,10,13-15,17-21,23,26-31,33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The following is a Final Office Action in response to the communication received on May 17, 2004. Claim 5 has been cancelled. Claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are now pending in this application.

### ***Response to Amendment***

2. The cancellation of claim 5 is acknowledged. The claim objections set forth in the previous Office Action are withdrawn as a result of the cancellation of claim 5.

### ***Response to Arguments***

3. Applicant's arguments have been fully considered, but are found unpersuasive. In the Remarks, Applicant argues the following: 1) that claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are within the technological arts; 2) that as per claims 1 and 13, Cooper does not provide steps to develop a brand profile or steps to develop a product; and 3) that as per claim 28, there is no motivation to combine Cooper and Eisner.

In response to argument 1), Examiner respectfully disagrees. While Examiner admits that claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are useful, concrete and tangible, she submits that they are not within the technological arts and further, that because claims are found useful, concrete and tangible does not automatically place them within the technological arts. The "two prong" test that was applied in the previous Office Action was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In*

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*re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the “technological arts.” The court developed a “technological arts” analysis:

The “technological” or “useful” arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it “enhances” the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the “technological art” because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the “mathematical exception” using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a “useful, concrete and tangible result.” See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no “business method exception” since the court decisions

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that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that “[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112.” See *State Street Bank & Trust Co.* at 1377. Both of these analyses go towards whether the claimed invention is non-statutory because of the presence of an abstract idea. *State Street* never addressed the first part of the analysis, i.e., the “technological arts” test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) **was already determined to be within the technological arts** under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences in affirming a §101 rejection finding the claimed invention to be non-statutory for failing the technological arts test. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

What is indeed important to note in the *Bowman* decision is that the Board acknowledged the dichotomy of the analysis of the claims under 35 U.S.C. § 101, thereby emphasizing the fact that not only must the claimed invention produce a “useful, concrete and tangible result,” **but that it must also be limited to the technological arts** in order to be deemed statutory under the guidelines of 35 U.S.C. § 101. The Board very explicitly set forth this point:

[1] We agree with the examiner. Appellant has carefully avoided tying the disclosed and claimed invention to any technological art or environment. As noted by the examiner, the disclosed and claimed invention is directed to nothing more than a human making mental computations and manually plotting the results on a paper chart [answer, page

5]. The Examination Guidelines for Computer-Related Inventions are not dispositive of this case because there is absolutely no indication on this record that the invention is connected to a computer in any manner.

Despite the express language of 35 U.S.C. §101, several judicially created exceptions have been excluded from subject matter covered by Section 101. These exceptions include laws of nature, natural phenomenon, and abstract ideas. See *Diamond v. Diehr*, 450 U.S. 175, 185, 209 USPQ 1, 7(1981). We interpret the examiner's rejection as finding that the claimed invention before us is nothing more than an abstract idea because it is not tied to any technological art or environment. Appellant's argument is that the physical (even manual) creation of a chart and the plotting of a point on this chart places the invention within the technological arts.

The phrase "technological arts" has been created to offer another view of the term "useful arts." The Constitution of the United States authorizes and empowers the government to issue patents only for inventions which promote the progress [of science and] the useful arts. We find that the invention before us, as disclosed and claimed, does not promote the progress of science and the useful arts, and does not fall within the definition of technological arts. The abstract idea which forms the heart of the invention before us does not become a technological art merely by the recitation in the claim of "transforming physical media into a chart" [sic, drawing or creating a chart] and "physically plotting a point on said chart."

In summary, we find that the invention before us is nothing more than an abstract idea which is not tied to any technological art, environment, or machine, and is not a useful art as contemplated by the Constitution of the United States. The physical aspects of claim 1, which are disclosed to be nothing more than a human manually drawing a chart and plotting points on this chart, do not automatically bring the claimed invention within the technological arts. For all these reasons just discussed, we sustain the examiner's rejection of the appealed claims under 35 U.S.C. §101. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669, 1671 (BdPatApp&Int 2001)

Similarly, in the present application, claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are deemed to be non-statutory because they are not limited to the technological arts; all recited steps could be performed manually by a human, thereby reinforcing the fact that Applicant's invention fails to "[p]romote the progress of science and useful arts," as intended by the United States Constitution under Art. I, §8, cl. 8 regarding patent protection.

In conclusion, Examiner submits that Applicant's claims do not meet the technological arts requirement under 35 U.S.C. § 101, as articulated in *Musgrave*, *Toma*, and *Bowman* as well as the Manual of Patent Examining Procedure.

In response to argument 2), Examiner respectfully disagrees. On page 7 and in Table 2, Cooper discloses a brand-attribute matrix based on customer-oriented market research where some of the attributes include vehicle characteristics related to usage experience, driving experience and design, such as front legroom, rear-seat room, engine size, horsepower, revolutions per mile and overall maintenance. A matrix is essentially a grouping, thus the brand-attribute matrix in Cooper is a grouping of product attributes related to vehicle characteristics. On page 3, Cooper discloses placing attributes in classes based on consumers' decision-making process, and thus, brand personality importance. Also on pages 3, 9 and 10, Cooper discloses generating preferred vehicle brand positions and target vehicle characteristics where it states (on page 3) that consumers have different consideration sets of brands...a market can be divided into a certain number of submarkets in which homogeneous consumers

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consider a distinctive subset of brands with a particular rule of attribute evaluation and reference to a specific ideal point. While the focus of Cooper may be on market structures, it still must determine brand profiles in order to determine market structures as defining market structures is based on establishing consumers' affinities towards brand profiles. Examiner notes that claims 1 and 13 are broad in that they do not expressly recite *how* a preferred vehicle brand position is generated, rather, that it is merely a "function" of vehicle attributes. Likewise, claims 1 and 13 do not expressly recite *how* target vehicle characteristics are generated, rather, that they are merely a "function" of vehicle attributes and brand position. Additionally, by using definitions in the Remarks (page 13) not explicitly recited in claims 1 or 13, it appears Applicant intends more specific meanings for "vehicle attributes" and "attribute classes" than are in the claims. As these terms are the basis for the invention of developing a brand profile, it is suggested the claims be amended to better clarify those terms' meanings. At present, applying the broadest reasonable interpretation to the meanings of "vehicle attributes" and "attribute classes" renders claims 1 and 13 anticipated by Cooper. Accordingly, it is respectfully submitted that Cooper et al. does disclose developing a brand profile.

In response to argument 3), Examiner respectfully disagrees. On page 315, Eisner discloses integrated product teams, which include several people who work together towards developing and selling new products. Some functional areas an integrated product team participates in include marketing and sales, research and



development, and production. Thus, Eisner teaches that the idea and use of cross-functional teams for the marketing and researching and development of a new product is not novel. Additionally, conducting consumer-market research is a well-known role in the areas of marketing and sales and research and development. As such, since Cooper teaches conducting consumer-market research to establish consumer preferences of brand profiles, it follows that a cross-functional team could be the group of people to conduct the consumer-market research in Cooper since Eisner teaches that cross-functional teams participate in marketing and sales and research and development of products. Accordingly, Examiner respectfully submits it is obvious to combine the teaching of Cooper and Eisner.

Therefore, Applicant's arguments have been fully considered, but are found unpersuasive. The rejections of claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are maintained and repeated below.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are rejected under 35

U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

As per the first prong of the test, for a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences) and therefore are found to be non-statutory subject matter. For a process claim to be satisfactory, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 only recite the steps to a method for developing a brand profile for a new product; however, the recited steps do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in person or by use of a pencil and paper and without the need of a computer or other technology.

As per the second prong of the test, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a brand profile (i.e., concrete) for the development of a new product (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31 and 33 are directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, 6-8, 13-15, 17-21, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al., "Building market structures from consumer preferences".

As per claims 1 and 13, Cooper et al. discloses a method of developing a brand profile for a new product comprising the steps of:

providing a predetermined plurality of product attributes each representing an identifiable feature of a generic product under consideration (page 3, paragraphs 2-5; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values.);

grouping said product attributes in response to customer-oriented market research (page 3, paragraphs 2-5; page 7, paragraph 3; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values. Table 2 represents a category-attribute matrix.);

placing each of said attributes in an attribute class corresponding to brand personality importance (abstract; page 7, paragraphs 3 and 4; Table 2; Attributes are placed in attribute classes corresponding to brand personality.);

thereafter, generating a preferred product brand position as a function of said product attributes, including identifying a competitive set of products, and associating

each of said product attributes with a preferred competitive level with respect to said competitive set (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2; The article discloses identifying competitive groups and how products' attributes influence their competitive levels.); and

generating target product characteristics as a function of said classified product attributes and said preferred product brand position, said target product characteristics representing customer-driven objectives for each of said plurality of product attributes to be incorporated into said new product (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; The article discloses generating target product characteristics (i.e., ideal point) based on preferred brand position and consumer preferences for certain attributes.

As per claims 2 and 14, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of providing a predetermined plurality of product attributes comprises the steps of providing a plurality of summary attributes and a clarifying definition for each of said summary attributes, said clarifying definition providing a relationship between each of said product attributes and the type of product under development (page 7, paragraphs 3 and 4; Table 2).

As per claims 3 and 15, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of providing a predetermined plurality of product attributes includes the step of providing a detailed definition for each of said product attributes, each of said detailed definitions providing a context for each attribute as it relates to the product under development (page 7, paragraphs 3 and 4; Table 2).

As per claims 4 and 17, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of placing each of said attributes in an attribute class includes the step of placing each attribute in one of three classes wherein said first class represents attributes which differentiate the product from competing products, said second class represents important attributes, but which do not differentiate the new product from competing products, and said third class represents otherwise desirable product attributes (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; Competing products are plotted at a distance from the ideal point, and thus, classified according to their competitive levels.).

As per claims 6, 18 and 19, Cooper et al. discloses a method as recited in claims 4, 13 and 17, further comprising the step of ranking each of said product attributes, said ranking being related to each of said classes such that each of said attributes in said first class have a higher rank than each of said attributes in said second class and each of said attributes in said second class have a higher rank than each of said attributes in said third class (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claims 7 and 20, Cooper et al. discloses a method as recited in claims 1 and 13, further comprising the step of generating a primary brand position as a function of said product attributes (page 3, paragraphs 2-5).

As per claims 8 and 21, Cooper et al. discloses a method as recited in claim 1 and 13, further comprising the step of generating a present product brand position as a function of said product attributes (page 3, paragraphs 2-5).

As per claim 26, Cooper et al. discloses a method as recited in claim 19, wherein the step of ranking each of said attributes includes the step of ranking design attributes differently than usage experience attributes and driving experience attributes (page 3, paragraphs 2-5; page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claim 27, Cooper et al. discloses a method as recited in claim 26, wherein the step of classifying each of said attributes includes the step of classifying each design attribute on a scale having more gradients than the classification scale for classifying usage experience attributes and driving experience attributes (page 3, paragraphs 2-5; page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 28, 29, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al., "Building market structures from consumer preferences" and Eisner, "Essentials of Project and Systems Engineering Management."

As per claim 28, Cooper et al. discloses a method of developing a brand profile for a new automotive vehicle comprising the steps of:

providing a plurality of vehicle attributes, said plurality including at least attributes from each of the following groups of vehicle characteristics: usage/experience, driving experience and design (page 3, paragraphs 2-5; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values.);

grouping said product attributes in response to customer-oriented market research (page 3, paragraphs 2-5; page 7, paragraph 3; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values. Table 2 represents a category-attribute matrix.);

placing each of said attributes in an attribute class corresponding to brand personality importance (abstract; page 7, paragraphs 3 and 4; Table 2; Attributes are placed in attribute classes corresponding to brand personality.);

providing target customer characteristics (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; The article discloses generating target product characteristics (i.e., ideal point) based on preferred brand position and consumer preferences for certain attributes.);

providing target vehicle brand image characteristics (page 3, paragraphs 2-5; Table 2);

thereafter, generating a preferred vehicle brand position as a function of said vehicle attributes, said target customer characteristics, and said target vehicle image characteristics (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10,

paragraph 1; Figure 2; The article discloses identifying competitive groups and how products' attributes influence their competitive levels.); and

generating target vehicle objectives as a function of said vehicle attributes and said preferred vehicle brand position, said target vehicle objectives representing customer-driven and image-driven characteristics for each of said plurality of vehicle attributes to be incorporated into said new automotive vehicle (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2).

Cooper et al. does not expressly disclose providing a cross-functional product team. However, Eisner discloses a cross-functional team (page 315, the integrated products teams are comprised of management, marketing and sales, research and development, engineering, production, finance and accounting). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have a cross-functional team that generates a vehicle brand position and objectives as doing so allows for various departments from differing business functions to partake in the vehicle product development, thus, promoting cross-functional consensus.

As per claim 29, Cooper et al. discloses all the limitations of the method as recited in claim 28 wherein the step of providing target customer characteristics comprises the step of providing a brand positioning summary (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claim 30, Cooper et al. discloses a method as recited in claim 29, wherein said brand positioning summary includes target customer defining characteristics, target customer selection rationales, a summary of the new vehicles' role in the product



portfolio, a competitive assessment, enduring reasons why a customer may purchase the new vehicle and pricing considerations (page 2, paragraph 6; page 3, paragraphs 2-5; page 11, paragraph 1; A competitive assessment is made along with customer selection rationales, and pricing considerations, etc.).

As per claim 33, discloses all the limitations of the method as recited in claim 28. Cooper et al. does not expressly disclose a cross-functional product team that includes at least one member from various corporate departments. It is well known in the art to create teams for marketing purposes. These teams would include people from the vehicle program management, marketing, purchasing, finance, engineering and design. It would have been obvious to one skilled in the art to have all these different types of people on a cross-functional product team as it allows people from the various groups in the company to combine expertise in producing the vehicle. It would have been obvious at the time of the invention to have a cross-functional product team as it uses expertise from all areas of the company.

10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al., "Building market structures from consumer preferences" and Eisner, "Essentials of Project and Systems Engineering Management," as applied above, and in further view of McCarthy et al. "Basic Marketing: A Global Managerial Approach."

As per claim 31, Cooper and Eisner disclose the limitations of the method as recited in claim 28 and the step of providing target vehicle image characteristics. However, Cooper and Eisner do not expressly disclose the step of providing a brand

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bulls eye, McCarthy et al. teaches placing data characteristics in a bulls eye formation (page 47). It would be obvious for one skilled in the art to place the brand information in a bulls eye format as it is a common format for depicting information pictorially. At the time of the invention, it would have been obvious for one to use the bulls eye to show brand information as it is a user-friendly format and clearly emphasizes important vehicle image characteristics.

#### ***Allowable Subject Matter***

11. Claims 10 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

703-872-9306 [Official Communications; including After Final  
communications labeled "Box AF"]

703-746-7202 [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA 7<sup>th</sup> floor receptionist.

  
cmc

August 18, 2004



**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**

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